UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN DOE, Plaintiff,	) Case No. 6:21-CV-06761 (FPG)(MWP)
vs.	) May 3rd, 2022
ROCHESTER INSTITUTE OF TECHNOLOGY, Defendant.	)

TRANSCRIPT OF TELEPHONIC ORAL ARGUMENT
BEFORE THE HONORABLE MARIAN W. PAYSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings recorded with electronic sound recording, transcript prepared with computer-aided transcription.

THE CLERK: Doe v. RIT, 21-CV-6761.

THE COURT: Okay. Counsel note their appearances for the record, please.

MR. BYLER: Yes, Your Honor. My name is Philip Byler from Nesenoff and Miltenberg representing the plaintiff, John Doe.

THE COURT: Okay. Good afternoon, Mr. Byler.

MR. BYLER: Thank you. Good afternoon.

MS. SCHWARTZOTT: Good afternoon, Your Honor. Jennifer Schwartzott of Bond, Schoeneck, and King on behalf of the defendant, Rochester Institute of Technology. Your Honor, I do want to say I also have one of our associates, Stephanie Fedorka, in my office with me.

THE COURT: Okay. Thank you. Good afternoon, counsel. And Mr. Rooney, my law clerk, Michael Rooney, is also on the line. Okay.

I have reviewed the motion that is pending before the Court to permit the plaintiff to proceed by pseudonym. RIT had -- does not oppose the motion to proceed under a pseudonym. Ms. Schwartzott, you didn't put in any papers, just a letter indicating there was no opposition, correct?

MS. SCHWARTZOTT: That's correct, Your Honor.

THE COURT: Okay. All right. Mr. Byler, thank you for your motion papers. A couple of observations that I want to make, and one question I want to ask you. It seems to me

that the applicable law, Second Circuit controlling authority, is set forth in a decision *Sealed Plaintiff v. Sealed Defendant Number 1*, 537 F.3d 185, 190 (2d Cir. 2008). Are you familiar with the test set forth in that decision?

MR. BYLER: Well, I am. And I actually, quite frankly, you know, I'm very conversant in this issue. I've been briefing it. One, *Doe v. Purdue*, at the district court level 2017. And I guess I'd like to start out by saying that these cases in this particular area need to be viewed separately because the cases are coming out of a confidential university disciplinary process.

And what pseudonym treatment does is to preserve the *status quo* ante of anonymity that, quite frankly, not only the plaintiffs want to preserve, but also universities. I mean, I have a long list of cases recognizing pseudonym treatment where it's just unquestioned.

There are three specific decisions where it was discussed at length. *Doe v. Purdue* happened to rely on Second Circuit case law, I think more recent than *Sealed*, but the point is, there's certain factors that are recognized specifically in this area as to why you have pseudonym treatment.

And I'm sorry for taking the floor as long as I just did, but if you have reservations about this issue, I'll brief it for you. I just feel very strongly that this is something that should be respected. I deal with universities all the

time, and most of them are adamant about having pseudonym treatment. So, position of the defendant in this case was not unexpected because there is a Jane Roe to protect.

THE COURT: Okay. Mr. Byler, if I can just --

MS. BYLER: I'm sorry I took over.

THE COURT: My question was really more specific than that. I didn't see in your brief that you had cited the *Sealed Plaintiff* Second Circuit decision. And I thought, perhaps, you were citing cases that relied on a Third Circuit test. And the Second Circuit decision in *Sealed Plaintiff* sets forth a non-inclusive list of ten considerations to be weighed and I just wanted to assure that you were familiar with that decision.

And just to, you know, get your view as to -- seems to me that those are considerations, that the Second Circuit has certainly suggested, should be weighed. And I think that you would argue that certain of those factors deserve more weight than others, and that this -- I really view this as the authority -- stands for the proposition that each of these cases is fact-specific and a determination needs to be made in each individual case as to whether pseudonym treatment should be granted.

So there's not -- you know, there's not a rule that says in cases that involve allegations of, you know, non-consensual sexual conduct on a college campus that, you know,

all those cases should be -- that the parties and the witnesses should be afforded the opportunity to proceed by pseudonym. I'm not sure there is, you know, a recognized presumption, although I will say that there certainly are, you know, a good number of cases that have granted the plaintiff the opportunity to proceed by pseudonym. There's some cases that go the other way.

It seems to me that if you look at authority dealing with challenges to the disciplinary procedures, challenges by somebody who was disciplined as a result of sexual conduct on a college campus, it seems to me that, you know, more cases do -- more courts have granted pseudonym treatment although, again, it's not uniform. So --

MR. BYLER: Your Honor, I want to -- if you're concerned about application of Second Circuit law, *Doe v. Purdue* was briefed on the theory of applying the Second Circuit test. That's 321 F.3d 339. Even though it was the Northern District of Indiana, I felt it was the best way of getting at the issue.

So, you know, *Doe v. Purdue* is a case which does apply Second Circuit factors and finds pseudonym treatment. And in terms of the number of cases, the count that I have been given is it's at least over 80, maybe 90, percent of these cases go pseudonym.

It's not, you know -- where there are -- where there is

not pseudonym treatment, there are specific facts in the cases such that there was already publicity, you know, about who the plaintiff was.

Bill Nungesser's case at Columbia was one such example, because his name was all over The New York Times and so on. You couldn't preserve pseudonym treatment there. Columbia failed to uphold the confidential treatment that was supposed to be held up in the disciplinary process. So, you have some cases where they don't, but there's specific reasons why.

The general reason, the general experience with these cases is, the courts are looking at such things as, there's information of intimacy, and a very important factor, injury to the plaintiff from revealing his identity while he's seeking vindication because, again, this is coming out of -- there's a process.

THE COURT: Let me interrupt you. I think, because I asked you a question at the beginning, perhaps you have the impression that, you know, I have a view that is contrary to the position that you've taken. You know, I don't think there's a basis necessarily to conclude that. I'm just asking a couple questions. So, I don't need to hear a recitation here of your argument.

I understand what your argument is. I think you've got some compelling arguments as to why you are making the motion that you are, but I did want to ask you about that, about the

consideration that you just mentioned, because I do think it is an important one and it is one that some courts have, I think, placed some significant reliance on if they have denied a motion to proceed with -- in a pseudonym fashion, with a pseudonym, and that is the extent to which the plaintiff has kept, in this case, his identity private.

So, I think that's the one consideration that your papers touch on, but as to which I feel like I don't have as much information as I could. I think you're telling me that there's been no publicity about this. It has not been reported in the press, the campus press, or any other press; is that correct?

MR. BYLER: As far as I know. I mean, I'm going on the information that's provided me when I drafted the complaint and that never came up. And, as far as I know, with, you know -- it just didn't occur it me to think it would come up. I know there are cases, because I've had them, where there is, you know, publicity in the press or in the college press and that creates issues, but that did not seem to be here at all.

THE COURT: Well, let me ask you, you know, I assumed -- and it sounds like, perhaps, incorrectly -- that that's something you would have discussed with your client. Did you talk to your client about whether your client --

MR. BYLER: I did discuss with the client --

THE COURT: Go ahead.

MR. BYLER: I did discuss with the client -- I'm sorry. May I add that I'm a little, you know, passionate about the issue because I'm in an argument with a prominent law professor on this whole issue. And, you know, we have a relationship. So, I'm apologizing because it's spilling over in our conversation. I don't mean that.

Yes. I did discuss, because I always do discuss, what happened, you know, when this case was brought, because it was eight months after supposedly the event, and there was nothing, you know, in that eight-month period.

So, you had a disciplinary case with decisions in the summer. And so, you know, it did come up that there was any press, but there wouldn't normally have been any press on the college because it was -- given the chronological sequence of events and what had happened, because this was a case where the case got retried and you got a worse result than the first time. And this wasn't one of those cases where, you know -- and I've had them, where, you know, there's some pressure being applied within the campus to go after somebody.

I had such a case at Columbia. None of that happened here, you know? You had a disciplinary case that was, you know, determined in the middle of the summer. And so, you didn't have a college press looking at it and, certainly, there was no local press. And this is a question I do raise

normally, I just don't often remember, but I just know from the sequence of events, that was not something that happened --

THE COURT: Mr. Byler --

MR. BYLER: -- and absent -- go ahead.

THE COURT: Ms. Schwartzott, let me ask you, can you answer that question from RIT's perspective? Do you know if there was any publicity as to this, you know, incident or the disciplinary proceeding surrounding the incident or the actual discipline that was imposed on the plaintiff?

MS. SCHWARTZOTT: Your Honor, it's my understanding there was no such publicity, and that it's best RIT knows this information did not get out beyond, you know, beyond the parties involved. But they're not aware of any press, any social media discussions about it, you know, forums on campus. RIT is not aware of any of that.

THE COURT: Okay. Mr. Byler, what can you tell me about, if you know, about the degree to which the plaintiff may have disclosed the incident that was at the heart of the discipline and the discipline to, you know, people beyond his close family members?

MR. BYLER: I think he is unhappy about the situation. No. He wasn't going around talking about it. He, you know, talked primarily with his father, with Mary Beth Steiner, who is our Title IX consultant of my firm, and me, in

order to address the situation.

THE COURT: Are you speaking on your own personal knowledge or are you speaking on your assumption that that's the case?

MR. BYLER: It's the best knowledge I've got. He has been cut off, because of the discipline, from other contacts within the school. He's not gone around and talked about it other than to, you know, tell his baseball coach he's got an issue, but did not go into the details. So that's what he told me. And then that is consistent with how John Doe has proceeded.

THE COURT: Ms. Schwartzott, do you have any information that would suggest that what counsel has represented is not accurate from your understanding?

MS. SCHWARTZOTT: I don't, Your Honor. I would, however, just add, so -- two additional to people. There were other students, right? So his -- John Doe's girlfriend --

THE COURT: Right.

MS. SCHWARTZOTT: -- was brought into this as well as a student witness. So, those two individuals were familiar with and provided -- the student witness provided statements that was contemplated during the disciplinary proceeding. To what extent those individuals told others, I don't know. We're not aware --

THE COURT: Okay.

MS. SCHWARTZOTT: -- that it was kind of something that was passed along, but those would be the additional people that Mr. Byler didn't mention.

THE COURT: Okay.

MR. BYLER: By the way, can I mention one case, the *Doe v. Colgate* case? On that --

THE COURT: Yeah, I don't need --

MR. BYLER: I was just going to say there was a news story concerning the defendant in that case, but not identifying specifically the plaintiff, and the Court said that's not enough to dispense with pseudonym treatment. So I just threw that in to indicate that maybe someone talked to somebody, that's not going to get you the level which undoes the justification for pseudonym treatment. And again, I apologize for being so verbose. I'm sorry.

THE COURT: Mr. Byler, I'm not sure that I, you know, disagree with you, although I do think that, under the case law that I find applies to this, that the extent to which the plaintiff had kept the information confidential or, by contrast, or has disclosed it, disseminated it more broadly, is a consideration to weigh. It may not be a consideration that trumps all others, but it is a fair consideration.

So, I think the -- you know, I think it's appropriate to ask about that information and to expect that that information will be -- you know, will be provided to the Court.

I will accept your representation because I understand that you are representing, not that you just assumed that he cared about keeping it confidential, so he did.

I am understanding that you are representing that you had a conversation with him and that you are satisfied, based on that conversation and your representing to the Court, that he discussed it with his family members, that there were witnesses who were involved in the disciplinary proceeding, and that he told his baseball coach that he had an incident, but didn't go into the details, and I'm accepting your representation that, you know, he did not discuss this, you know, more broadly than that.

MR. BYLER: That is my representation.

THE COURT: All right. I'm going to make my ruling from the bench. I agree with Mr. Byler that I think the weight of authority in cases like this does support plaintiff's application to proceed by pseudonym. And, in that respect, I'm relying on *Doe v. Louisiana State University*, 2020 Westlaw 6493768 at page 2, Middle District of Louisiana 2020.

Quote, the Court recognizes that this particular type of case in which a male student sues a university that found him guilty of committing sexual assault after an allegedly broad and deficient disciplinary proceeding is a target for increased media attention.

In these types of cases, courts repeatedly have allowed plaintiffs to proceed under a pseudonym according to cases *Doe v. Purdue University*, 321 F.3d 339 at 342 (N.D.I.N. 2017) noting in a case where the complaint set out intimate details regarding plaintiff and Jane Roe's sexual relationship, Jane Roe's allegations of sexual misconduct, and the details of the university's findings that, quote, other courts have permitted plaintiffs alleging similar claims against colleges and universities to proceed anonymously.

Collecting cases *Doe v. Colgate University*, 2016 Westlaw 1448829 at 34, (N.D.N.Y. 2016). Quote, while the Court is mindful of the high burden a plaintiff must meet to show that anonymity is warranted, the Court takes note that courts across the country have allowed plaintiffs alleging similar crimes against colleges and universities stemming from investigations of sexual assault to proceed anonymously.

The Court finds that, particularly in the context of investigating allegations of sexual assault on college campuses, it is imperative that the rights of all parties involved be thoroughly protected in order to properly adjudicate these claims, collecting cases. Still, each situation is different and, quote, must be evaluated on a case-by-case basis, and the factors set forth by the Second Circuit in *Sealed Plaintiff* offer necessary guidance for courts grappling, end quote, with a party's request to proceed

under a pseudonym. *Doe v. Colgate University* at page 2. I have considered the factors that are set forth in the *Doe* and the *Sealed Plaintiff* case, the Second Circuit *Sealed Plaintiff* case, some of those considerations, I think, are weightier than others than a case like this.

The first factor, let me just get the list out here, whether the litigation involved matters that are highly sensitive and of a personal nature. I think that that factor unquestionably weighs in favor of plaintiff as to all the challenges to the disciplinary procedures.

The incident that gives rise to the challenge to the disciplinary procedures involved sexual conduct between a plaintiff and Jane Roe and the incident is plainly sensitive, personal in nature and the revelation of plaintiff and Jane Roe's names would result or certainly their -- it's not speculative to say -- would result in embarrassment, if not humiliation, and, if not, emotional distress to both the plaintiff and to Jane Roe.

Factors two and three in my estimation can be considered together. I think they also weigh in favor of the plaintiff, whether identification poses a risk of retaliatory, physical, or mental harm to the parties seeking to proceed anonymously, or, even more critically, to an innocent non-party; three, whether identification presents other harm and the likely severity of those harms including whether the injury litigated

against would be incurred as a result of the disclosing of the plaintiff's identity. If disclosure creates risk of harm, disclosure is disfavored, but the risks must be more than speculative claims of physical and mental harm. These factors, in my estimation, weigh in favor of the plaintiff.

And as proceeding as a -- with a pseudonym certainly, there is a risk of emotional distress both to the plaintiff who claims that he was unfairly determined to have committed sexual assault that was non-consensual through a flawed process, and also risks emotional distress to the Jane Roe who claims that she was a victim of a non-consensual sexual assault committed by the plaintiff.

In Doe v. Trustees of Dartmouth College, the court stated at page 6, even most salient to the Court when assessing bases upon which disclosure is feared or sought to be avoided is the victim's interest in anonymity. Should the plaintiff be publically identified, the alleged victim would likely be identified as well. And. In that case, the court found that the alleged victim has a stronger case for anonymity, unlike a litigant who is using the courts, must be prepared to accept public scrutiny that is an inherent part of public trials. The alleged victim is a non-party.

So, I consider both the interest of both the plaintiff and I think we're calling her Jane Roe but the alleged victim in this case as well.

Here, the plaintiff alleges that, regardless of whether he prevails in this action, revelation of his name would hinder his future academic career prospects resulting in further mental, emotional, and psychological harm because his name would be discoverable by a simple internet search, and public identification could defeat the very purpose of the litigation.

I agree that that is a legitimate interest and one which favors disclosure -- favors proceeding by a pseudonym, while the allegations of potential harm are not supported by any expert opinion. I think the concern of harm is sufficiently real and concrete to deserve weight; particularly in this age where -- and I think plaintiff papers note this, but certainly other cases have -- in the internet age, where once something is made public, that disclosure may be out there for a very long time associated with the plaintiff's name.

Doe v. Trustees of Dartmouth College. The court, in that case, recognized that at pages 5 to 6, 2018 Westlaw 2048385, quote, more significant in this case, plaintiff's argument that public disclosure will subject him to reputational damage and will impair any future educational and career prospects at Dartmouth, regardless of the actual outcome of this action. Such concern is only exacerbated in the internet age which can provide additional channels for harassment and will connect plaintiff's name to Dartmouth's findings and sanction forever,

whether or not he is successful in this litigation. So, I find that the first three factors in *Sealed Plaintiff* weigh in favor of the plaintiff.

The next factor, whether the plaintiff is particularly vulnerable to the possible harm and disclosure, particularly in light of his age, that is a factor, in my estimation, that does not weigh in favor of the plaintiff. He's an adult. He was an adult at the time this happened, and I'm not aware of any particular vulnerability.

Whether the suit is challenging the actions of the government or that of a private party. This involves the action of a private party. I think, technically, that consideration to the extent that it deserves consideration weighs against the plaintiff, but I don't find that to be a very strong consideration.

Whether the defendant is prejudiced by allowing the plaintiff to press his claim anonymously, whether any prejudice can be mitigated by the district court. There's no issue of prejudice here. RIT has made clear, the plaintiff has made clear that RIT is aware of the plaintiff's true identity. There's no question about that. So, there's no prejudice that can be shown by RIT, and RIT has not argued to the contrary. That factor weighs in favor of the plaintiff.

Whether the plaintiff's identity has, thus far, been kept confidential. I do think that that is a consideration that

deserves weight and deserves more weight than some of the other considerations or, in balance, I find that that consideration weighs in favor of the application pending before the Court, the record before the Court, and based upon the representations made by the plaintiff's counsel supports the inference that plaintiff has not disclosed this incident or the discipline in any significant manner, but rather has disclosed it to, quote, family members, people who know about it, have learned about it through -- in the disciplinary process itself.

And there's nothing in the record to suggest that the plaintiff has posted anything on social media about it, had made any statements to the press, has broadly disseminated it to large, you know, groups of students or classmates.

Whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity. I find that consideration is, frankly, a neutral consideration. I don't think that weighs one way or the other here.

Whether, because of the purely legal nature of the issues presented, there is an atypically weak public interest in knowing the litigants' identity. This is not a legal issue. This a factual issue, although I recognize that, you know, at the core, there are some legal questions here with respect to the disciplinary procedures that were utilized, but is it --

that factor weighs against the plaintiff, although it is not a particularly significant consideration.

Are there other alternative means for protecting the confidentiality of the plaintiff? I don't think there are any realistic mechanisms besides granting pseudonym treatment that would be adequate to protect the confidentiality of the plaintiff.

So, weighing those considerations, considering the case law that I have that relates to claims such as the claims made here, I grant the plaintiff's motion to proceed by pseudonym, which is unopposed by RIT, and I will issue an order to that effect later today. Okay. Anything else?

MR. BYLER: Thank you, Your Honor. Well, no. Thank you, Your Honor. I just want to say that was an excellent, excellent discussion, and I apologize because you're on top of this in a way that I didn't know and I wouldn't have talked as much if I had known, so please accept my sincere feelings. That was a well-done discussion.

THE COURT: Ms. Schwartzott, anything you need to add?

MS. SCHWARTZOTT: No, Your Honor.

THE COURT: Okay. I think we've got a scheduling order in place. Do we, or do I need to --

MS. SCHWARTZOTT: We submitted a proposed plan, Your Honor and -- but we're open to, you know, we laid out --

Mr. Byler and I conferred by email because of our various schedules but we were amenable to the dates that we submitted.

THE COURT: Okay. I want to find the findings. Did you give that to me? I apologize. I just don't have it at my fingertips.

MS. SCHWARTZOTT: Your Honor, we filed it this morning, and then I confirmed with your clerk, Kim, and she indicated that she did see it, but I can shoot it over again if it's helpful.

THE COURT: Okay. So you did it this morning? I have a docket sheet that I printed yesterday, so I guess that's --

MS. SCHWARTZOTT: Oh, okay.

THE COURT: Let me pull it up on the docket sheet. Just bear with me for a minute.

MS. SCHWARTZOTT: Sure. And I apologize for that inconvenience, Your Honor. We had -- my assistant was out yesterday, and I was working remote, so we just didn't get it filed until this morning. I apologize.

THE COURT: Printing it out. Okay. So, I'm going to require that the parties engage in the mediation process, which is part of our court-ordered process. So, did you talk about when you might be able to agree on a mediator? I don't see that in here.

MS. SCHWARTZOTT: No, Your Honor.

MR. BYLER: Go ahead, Jennifer, I'm sorry.

MS. SCHWARTZOTT: We did not do that yet, Your Honor. We did just put a deadline of when we make that request, but we certainly, if you are open to -- if you want to --

THE COURT: Paragraph 1 of the scheduling order will have the mediation deadlines that come out -- that are automatically generated by our plan. I suspect that it will give you a deadline of some time probably end of May, early June, for designating a mediator acceptable to both sides.

If one is not designated, then the Court will appoint somebody for you, and I think you'll probably have until some time around the end of July or middle of August to conduct a mediation, but that's kind of going by memory of how long those periods are. But that will be at paragraph 1 of the Court's scheduling order.

By report on deposition hours, what do you mean by that?

MS. SCHWARTZOTT: So, it's my understanding we have to give an approximation per party of how many hours we need.

THE COURT: Well, I mean, I would say to the extent that you are proposing depositions that will exceed the limits within the federal rules, then you'd have to get permission of the Court. So I'm going to assume there's not a problem there unless you come back to me and let me know there is.

Amendment of the pleadings. May 30th. Does either side expect to ask to amend the pleadings?

MR. BYLER: I don't. This is Mr. Byler. I don't.

MS. SCHWARTZOTT: Your Honor, I don't anticipate that as well.

THE COURT: Okay. Mandatory disclosures. You set that out in a, sort of, chronological fashion with all of the disclosures being made by August 29th, including supplemental disclosures. That's fine. Discovery to be completed by Halloween. That's okay. Let's see. Oh, and then you've got request for admissions after that. So, is that to say that you would like to, essentially, have an understanding between yourselves that requests for admission will not be considered discovery within the factual discovery deadline?

MS. SCHWARTZOTT: Yes. I guess, Your Honor, the thinking on that was, once we have, you know, the body, the universe, if there are requests that can be made that can alleviate issues for trial and come to an agreement on things that we would have that opportunity by that deadline.

MR. BYLER: Yeah. Also, I mean -- also, you know, the request for admission would, you know, come up in terms of any pretrial dispositive motions, but that's farther out. But putting it where it is, you have an ample opportunity to, you know, deal with the discovery record so you can do requests for admission. Nothing is more frustrating when people rush out with a request for admission and there's really nothing in the discovery to support it, to make it clear, to make it

specific.

THE COURT: That's fine. I think generally if one sets a fact discovery deadline, one would expect that that would include requests for admission. So I just wanted to make sure I understood that you're essentially proposing that all other discovery, factual discovery, be completed by the end of October with the exception of requests for admission and that deadline for that would be November 14th. That's okay.

Expert witnesses, that is, expert witnesses on behalf of both sides, to be identified in and reports prepared by December 5th. Is that the proposal?

MS. SCHWARTZOTT: Yes, Your Honor.

MR. BYLER: Yes, Your Honor.

THE COURT: Okay. And then, summary judgement motions, February 1?

MR. BYLER: Yes, Your Honor.

MS. SCHWARTZOTT: Yes.

THE COURT: Okay. That sounds fine. I'm going to build in a further status conference. So what -- we'll do that probably some time in late October. Do you want me to give you a date now or do you want me just to build it into the schedule?

MS. SCHWARTZOTT: Yes, Your Honor. I have a trial that starts the end of September that might carry into that

first week of October, the third week of October --

THE COURT: How about October 25th at 10?

MS. SCHWARTZOTT: That would be perfect. That's fine with defendant.

THE COURT: Okay.

MR. BYLER: October 25th is good with plaintiff. I'm sorry.

THE COURT: Okay. I'll build that in.

The last thing I want to say is, if you have any discovery disputes, and you'd like to try to resolve them informally, I'm happy to do that, but I require two things; number one, that you -- and you can email me a letter, but when you ask for a conference to address discovery disputes, I want you to lay out the dispute with enough specificity so that I can understand it and be prepared to be helpful at the conference.

So, don't just tell me that you have 25 disputes and you'd like the Court's assistance. Tell me, you know, we'd like to address the following issue. This is, you know, the plaintiff's view. This is the defendant's view. And the other thing the letter needs to tell me is that you tried to resolve the dispute with one another before bringing it to me, even if you bring it to me informally. So, I don't require that. Some judges require a pre-motion conference. I'm not one of those judges.

If you want to file a formal motion, you're free to do

that. If you want to try to resolve it informally, I'm happy to have a telephone conference with you to address that. In either event, make sure you confer before bringing it to the Court for resolution, okay?

MS. SCHWARTZOTT: Yes, Your Honor. Thank you.

MR. BYLER: Yes, Your Honor.

THE COURT: Okay. That's all I have. So, I'll take this scheduling plan and convert it into a scheduling order. It will be probably get docketed tomorrow. Okay?

MS. SCHWARTZOTT: Thank you very much.

MR. BYLER: Yes, Your Honor. Thank you very much, Your Honor.

THE COURT: Okay. Anything else?

MS. SCHWARTZOTT: I don't believe so.

THE COURT: Okay.

MR. BYLER: No.

THE COURT: Thank you very much. Have a nice day. Take care.

MR. BYLER: Thank you very much, Your Honor. You, too. Bye, bye.

MS. SCHWARTZOTT: Bye, bye.

(Proceedings concluded.)

CERTIFICATE OF TRANSCRIBER

In accordance with 28, U.S.C., 753(b), I certify that this is a true and correct record of the proceedings held in the United States District Court for the Western District of New York before Honorable Magistrate Judge Marian W. Payson on May 3rd, 2022.

s/ Megan E. Pelka, RPR

Megan E. Pelka, RPR

Transcriber